

**A Kasturi Kesveren a/l Balsamy lwn Chew Boon Choy B/P Best
Fair Promotion Sdn Bhd**

B MAHKAMAH TINGGI (IPOH) — USUL PEMULA NO 25–17 TAHUN
2010
ZAINAL ADZAM H
11 NOVEMBER 2010

C *Profesion Undang-Undang — Tatatertib profesional — Salahlaku —*
Perkara-perkara berkaitan penjualan hartanah — Tanggungjawab perayu sebagai
pemegang amanah (stakeholder) — Melepaskan wang deposit kepada orang yang
tidak diberikuasa — Keputusan Lembaga Tatatertib memerintah perayu
D *dibatalkan daripada senarai peguambela dan peguamcara — Rayuan terhadap*
ketetapan yang dibuat oleh jawatankuasa tatatertib — Mengenakan tiga
pertuduhan yang berbeza daripada pertuduhan-pertuduhan oleh tribunal
siasatan terhadapnya — Sama ada prejudis perayu dalam pembelaannya — Sama
ada perayu membangkitkan apa-apa keraguan yang munasabah

E Perayu merupakan seorang peguambela dan peguamcara yang telah diterima
masuk dan didaftarkan pada tahun 1995. Akibat daripada suatu aduan salah
laku oleh responden kepada lembaga tatatertib, suatu tribunal siasatan telah
dilantik untuk menyiasat aduan tersebut. Perayu telah menghantar penjelasan
bertulis kepada tribunal siasatan melalui surat bertarikh 23 Julai 2007. Setelah
F selesai penyiasatan, tribunal siasatan telah pada 11 April 2008 membuat
ketetapan fakta bahawa responden bersalah terhadap salah laku seperti yang
dinyatakan di bawah s 94(3)(c) Akta Profesion Undang-Undang 1967.
Tribunal siasatan seterusnya mengesyorkan bahawa satu siasatan rasmi oleh
jawatankuasa tatatertib diadakan. Oleh demikian, satu jawatankuasa tatatertib
G telah dilantik untuk membuat penyiasatan rasmi dan mendengar saksi-saksi
daripada kedua-dua pihak. Setelah menjalankan penyiasatannya, jawatankuasa
tatatertib mengesyorkan bahawa perayu dibatalkan daripada senarai
peguambela dan peguamcara. Keputusan ini disahkan oleh lembaga tatatertib
dan pada 21 Mei 2010 perayu telah diperintah dibatalkan daripada senarai
H peguambela dan peguamcara. Maka rayuan ini di mana perayu
membangkitkan berbagai isu dan fakta terhadap ketetapan yang dibuat oleh
jawatankuasa tatatertib serta tribunal siasatan. Perayu menyatakan bahawa
tribunal telah terkhilaf apabila membuat kesimpulan bahawa perayu bersalah
ke atas kesalahan salahlaku. Tugas tribunal mengikut perayu adalah hanya
I untuk membuat cadangan-cadangan kepada lembaga tatatertib. Seterusnya,
perayu telah membangkitkan isu bahawa jawatankuasa tatatertib telah
mengenakan tiga pertuduhan yang berbeza daripada pertuduhan-pertuduhan
oleh tribunal siasatan terhadapnya. Perkara ini memprejudis perayu dalam
pembelaannya. Perayu juga menafikan bahawa dia melakukan apa-apa

misrepresentasi kepada responden. Seterusnya perayu menyatakan bahawa dia telah diberi kuasa oleh Tetuan Ravichandaran & Anuar (Ravi). Peguamcara perayu mengikut perayu pada setiap masa ada pengetahuan sebenar bahawa peguamcara penjual hartanah sebenarnya adalah Ravi. Perayu telah mengemukakan salinan-salinan surat yang menunjukkan bahawa perayu diberi kuasa oleh Ravi untuk bertindak bagi pihak firma Ravi. Perayu juga telah membangkitkan isu bahawa dia tidak melanggar apa-apa akujanji kerana semua perkara berkaitan dengan pelepasan wang deposit telah disempurnakan dan pada masa berkenaan pihak-pihak sedang berunding mengenai pembayaran baki wang pembelian hartanah sahaja.

Diputuskan, menolak rayuan dengan kos:

- (1) Perkataan 'guilty' di dalam laporan tribunal siasatan perlu dibaca dalam konteks laporan sepenuhnya yang dibuat oleh tribunal siasatan. Ia selaras dengan tanggungjawab dan tugas tribunal tersebut untuk mencadangkan satu penyiasatan rasmi diadakan oleh jawatankuasa tata tertib sekiranya 'cause of sufficient gravity exists' terhadap perayu. Perkataan 'guilty of misconduct' adalah ketetapan tribunal selepas mempertimbangkan keterangan-keterangan dan dokumen yang dikemukakan kepadanya. Perayu tidak diprejudiskan kerana jawatankuasa tata tertib hanya boleh menentukan kesalahan yang dilakukan oleh perayu dan ketetapan tersebut perlu disahkan oleh lembaga tata tertib (lihat perenggan 7).
- (2) Daripada kandungan surat penjelasan perayu jelas bahawa perayu tidak keliru mengenai kesalahan yang dikatakan dilakukan olehnya. Kalau ada kesilapan dalam perkara ini pun, ia merupakan perkara teknikal dan remeh dan bukan satu perkara substantif yang memprejudiskan perayu. Yang penting mengenai isu ini ialah bahawa jawatankuasa tata tertib tidak mengambilkira perkara-perkara yang luar daripada apa yang diadukan oleh responden ataupun luar daripada pengetahuan perayu (lihat perenggan 10).
- (3) Tingkah laku perayu secara keseluruhan dalam kes ini menunjukkan bahawa perayu tidak mempunyai apa-apa alasan atau pembelaan yang kukuh. Sepertimana ketetapan jawatankuasa tata tertib, perayu telah buat misrepresentasi kepada pihak responden. Sebagai tambahan perjanjian jual beli pada setiap masa secara nyata memperuntukkan firma perayu sebagai peguamcara penjual hartanah (lihat perenggan 19).
- (4) Dalam kes ini perayu gagal membangkitkan apa-apa keraguan yang munasabah terhadap keterangan-keterangan yang dikemukakan oleh jawatankuasa tata tertib. Kesalahan salahlaku oleh perayu dengan jelas telah dibuktikan oleh jawatankuasa tata tertib pada tahap melampaui apa-apa keraguan yang munasabah. Oleh yang demikian mahkamah mendapati bahawa tiada apa-apa kesilapan dilakukan oleh jawatankuasa tata tertib dalam membuat ketetapan dan keputusan mengenai kesalahan

- A salahlaku terhadap perayu. Isu-isu yang dibangkitkan oleh perayu adalah tidak berasas dan remeh (lihat perenggan 21).

[English summary]

- B The appellant was an advocate and solicitor who had been admitted and registered in year 1995. Following from a complaint by the respondent to the disciplinary board, a tribunal of inquiry was formed to inquire into the complaint. The appellant had submitted his written explanation to the tribunal of inquiry by a letter dated 23 July 2007. Upon the completion of the investigation, the tribunal of inquiry had on 11 April 2008 made a findings of fact that the respondent was guilty of misconduct as specified in s 94(3)(c) of the Legal Profession Act 1967. The tribunal of inquiry further suggested that a formal investigation by the disciplinary committee be held. Therefore, a disciplinary committee was appointed to make a formal investigation and to hear the witnesses of the complainant and the appellant in this case. Upon completion of its inquiry, the disciplinary committee recommended that the appellant be struck off the roll. This decision had been confirmed by the disciplinary board and on 21 May 2010 the appellant had been ordered to be struck off the roll. Hence this appeal where the appellant raised several issues and facts against the findings made by the disciplinary committee as well as the findings by the tribunal of inquiry. The appellant stated that the tribunal had erred when it came to the conclusion that the appellant was guilty of the offence of misconduct. The duty of the tribunal according to the appellant was only to make recommendation to the disciplinary board. Further, the appellant had raised the issue that the disciplinary committee had imposed three different charges from the charges by the tribunal of inquiry against him. This matter caused prejudice to the appellant in his defence. The appellant denied that he had misrepresented to the respondent. Further the appellant contended that he had been given the authority by Messrs Ravichandaran & Anuar (Ravi). The appellant's advocate, according to the appellant, had, at all the material time the actual knowledge that the property vendor's solicitor was in fact Ravi. The appellant had adduced copies of the letters showing that the appellant had been given the authority by Ravi to act for Ravi's firm. The appellant had also raised the issue that he did not breach any undertaking as all the matters with regards to the redemption of deposit money had been completed and at that time the parties were discussing on the payment of balance of the property's purchase money only.

Held, dismissing the appeal with costs:

- I (1) The word 'guilty' in the report of the tribunal of inquiry must be read in the context of the report as a whole as prepared by the tribunal of inquiry. The statement was in line with the duty and responsibility of the tribunal to suggest a formal investigation by the disciplinary committee if 'cause of sufficient gravity exists' against the appellant. The word 'guilty of

misconduct' was the finding of the tribunal after giving due consideration to the evidence and documents presented before it. The appellant was not prejudiced as the disciplinary committee could only determine the offence committed by the appellant and the determination must be confirmed by the disciplinary board (see para 7).

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- (2) From the contents of the appellant's letter of explanation it was clear that the appellant was not confused as to the offence allegedly committed by him. Even if there was a mistake in this matter, it was merely technical and trivial and not a substantive matter which would prejudice the appellant. More importantly about this issue was that the disciplinary committee did not take into account the matters which were outside of what was complained by the respondent or out of the appellant's knowledge (see para 10).

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- (3) The demeanour of the appellant as a whole in this case showed that the appellant did not have any grounds or strong defence. As per the determination by the disciplinary committee, the appellant had misrepresented to the respondent. Additionally, the sale and purchase agreement, at all the time, had clearly provided that the appellant's firm was the property vendor's solicitor (see para 19).

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- (4) In this case, the appellant had failed to raise any reasonable doubt against the evidence adduced by the disciplinary committee. The offence of misconduct by the appellant had clearly been proved by the disciplinary committee beyond reasonable doubt. Therefore the court found that there was no error by the disciplinary committee in its determination and decision as to the offence of misconduct by the appellant. The issues raised by the appellant were baseless and trivial (see para 21).]

F

G

Nota-nota

Untuk kes-kes mengenai salah laku, lihat 9 *Mallal's Digest* (4th Ed, 2010 Reissue) perenggan 1745–1820.

Undang-undang yang dirujuk

H

Akta Profesion Undang-Undang 1976 ss 103C, 103D, 94(3)(c), (o)
Kaedah-Kaedah Prosedur Peguambela dan Peguamcara (Siasatan Tatatertib)
1970 Peraturan 6

Visvanathan (Mahendran bersamanya) (JS Olikh & Co) bagi pihak perayu.

I

YL Chong (YL Chong & Associates) bagi pihak responden.

*Raam Kumar (KB Tan & Kumar) bagi pihak Lembaga Tatatertib
Peguam-Peguam.*

Murali Navaratnam (Suresh & Associates) bagi pihak Majlis Peguam Malaysia.

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Zainal Adzam H:

B

[1] Perayu merupakan seorang yang telah diterimamasuk dan didaftarkan sebagai peguambela dan peguamcara pada tahun 1995. Akibat daripada aduan melalui surat bertarikh 17 Mac 2006 oleh responden kepada Lembaga Tatatertib Peguam-Peguam, Tribunal Siasatan telah dilantik pada 5 Julai 2006 untuk menyiasat aduan tersebut. Latar belakang aduan oleh responden melalui surat bertarikh 7 Mac 2006 adalah seperti berikut:

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BACKGROUND FACTS

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On or about March 2005, the Complainant intends to purchase a piece of land i.e. Geran No. 46223, Lot 896, Mukim Kajang, Daerah Ulu Langat, Negeri Selangor Daru Ehsan (hereinafter referred to as the property from Tai Nam Sin And Sons Realty Limited (Company No, 3615-X) of No. 8, Lorong Titiwangsa 6, Off Jalan Pahang, 53200 Kuala Lumpur (hereinafter referred to as "the Vendor").

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The conveyancing solicitor acting for Complainant in the proposed sale and purchase of the Property is Messrs Chew Lay Yan & Co. of No. 13-2, Jalan Kajang Indah, Taman Kajang Indah, Sungai Chua, 43000 Kajang, Selangor Darul Ehsan (hereinafter referred to as "M/S CLY & Co.") whereas Messrs Kas & Abd Malik (hereinafter referred to as "M/s K & AM") are solicitors acting for the Vendor. Mr. Kasturi is the solicitor in charge of the proposed sale and purchase transaction on behalf of the Vendor.

F

On 7/3/2005, M/s CLY & Co wrote to M/s K & Am as solicitors acting for the Vendor and inter alia proposed the following terms of the sale and purchase of the Property:

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- (i) The purchase consideration of the Property is RM7,500,000.00;
- (ii) A sum of RM150,000.00 being 2% earnest deposit shall be deposited with M/s K&AM as stakeholder on behalf of the Vendor upon the Vendor agreeing to the terms proposed in the said letter;
- (iii) The balance deposit of RM600,000.00 which is equivalent to 8% of the purchase consideration shall be deposited with M/s K&AM as stakeholder after a formal Sale and Purchase Agreement is executed;

H

- (iv) The earnest deposit and balance deposit shall only be released by M/s K&AM to the Vendor after execution of the Sale and Purchase Agreement by the Vendor and upon M/s CLY&Co's receipt of the documents evidencing withdrawal of the private caveat lodged on the Property vide presentation number 27150/2004;

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- (v) The Balance purchase price of RM6,750,00.00 shall be paid to M/s K&AM as stakeholder for the Vendor within 4 months from the date of the sale and purchase agreement subject to an automatic extension of 2 month with interest at the rate of 6% per annum on the balance purchase price or any part thereof remaining unpaid.

A copy of the said letter dated 7/3/2005 from M/s CLY& Co is enclosed herewith and marked as exhibit "P-1". A

On 8/3/2005, M/s K&AM confirmed that the Vendor is agreeable to all the terms stated in the said letter of 7/3/2005 except that the late payment interest shall be 8% per annum. A copy of the said letter dated 8/3/2005 from M/s K&AM is enclosed herewith and marked as exhibit "P-2". B

On the same day relying on the confirmation from M/s K&AM the Complainant via M/S CLY&Co. gave a PBB cheque no. 640565 dated 7/3/2005 for the sum of RM150,000.00 payable to M/s K&AM as stakeholder being the 2% earnest money in respect of the purchase of the Property. In the said letter dated 8/3/2005, M/s CLY&CO also enclosed a copy of the Option to Purchase for M/s K&AM's onward transmission of the same to the Vender for their execution. C

A copy of the said letter dated 8/3/2005 from M/s CLY&Co. and the said PBB cheque no. 640565 are enclosed herewith and marked as exhibit "P-3" and "P-4" respectively. D

Subsequently, M/s K&AM returned the duly executed Option to Purchase dated 25/3/2005 (with the Vendor's common seal affixed therein) and attested by a lawyer by the name of N. Kalyana Sundaram to M/s CLY& Co. E

A copy of the said Option to Purchase dated 25/3/2005 is enclosed herewith and marked as exhibit "P-5".

M/s K&AM also prepared the draft sale and purchase agreement which was forwarded to M/s CLY & CO by an agent who is involved in the transaction i.e. Mr. Foo Swee Fee. F

On 11/4/2005 M/s CLY&Co. proposed several amendments to the said draft to M/s K&AM. G

A copy of the said letter dated 11/4/2005 from M/s CLY&Co is enclosed herewith and marked as exhibit "P-6".

On 2/4/2005 Mr. Kasturi came personally to the office M/s CLY&Co and informed Miss Chew Lay Yan of M/s CLY&Co that the proposed amendments are agreeable by the Vendor. Mr. Kasturi then forwarded fair copies of the sale and purchase agreement to Miss Chew Lay Yan for her perusal and comments. H

Mr. Kasturi also forwarded a letter dated 12/4/2005 to Miss Chew Lay Yan which inter alia confirmed the followings: I

- (i) That the original Issue Document of Title to the Property is presently in the custody of M/s K&AM;
- (ii) That the withdrawal of private caveat from duly executed by one Tai Pit Yong @

A Tai ah Sam in respect of the private caveat lodged vide presentation no. 27150/2004 is in the custody of M/s K&AM

In the same letter, the following documents were also forwarded to M/s CLY& Co.:

- B** (i) the Vendor's board resolution approving the sale of the Property;
- (ii) certificate true copy of the Vendor's Forms 24, 49 and Memorandum and Articles of Association;
- (iii) a copy of the quit rent receipt for the year 2005. A copy of the said letter dated 12/4/2005 from M/s K&AM and the said resolution are enclosed herewith and
- C** marked as exhibits "P-7" and "P-8" respectively.

Miss Chew Lay Yan disputed the said resolution on the ground that it was only signed by one director of the Vendor company. Consequently M/s K&AM forwarded to M/s CLY&Co another board resolution dated 15/4/2005 which approved the sale of the Property at RM7,500.000.00 signed by 3 directors of the Vendor company.

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A copy of said resolution dated 15.4.2005 is enclosed herewith and marked as exhibit "P-9".

E On the same day i.e. 12/4/2005 upon leaving the office of M/s CLY&Co. Mr. Kasturi also took along the fair copies of the sale and purchase agreement which have been perused and checked by M/s CLY & Co to be executed by the Vendor.

F On 3/4/2005 on behalf of M/s K&AM Mr. Foo Swee Fee forwarded the sale and purchase agreement duly affixed with the common seal of the Vendor company and witnessed by 2 directors and a lawyer by the name of N. Kalyana Sundaram to M/s CLY & Co.

G *A copy of said sale and purchase agreement is enclosed herewith and marked as exhibit "P10".*

On the same day M/s CLY&Co. gave to Mr. Foo Swee Fee a PBB cheque no. 640635 dated 12/4/2005 for the sum of RM600.000.00 payable to M/s K&AM as stakeholder for the Vendor being the 8% balance deposit in respect of the Property.

H

In their letter dated 13/4/2005 enclosing the said cheque, M/s CLY&Co expressly stated that the said sum of RM600.000.00 and the earlier sum of RM 150.000.00 were forwarded to M/s K&AM upon their express undertaking not to release the said monies to any persons until the receipt by M/s CLY&Co of the following documents:-

I

- (i) M/s K&AM's written undertaking that the private caveat lodged by one Tai Pit Yong @ Tai Kah Sum vide presentation number 27150/2004 has been withdrawn together with the presentation statement evidencing such withdrawal;

- (ii) A board resolution approving the sale and purchase of the Property duly executed by all the directors of the Vendor; **A**
- (iii) The certified true copy of the Form 44 of Tai Nam Sin & Sons Realty Sdn.Bhd;
- (iv) The certified true copy of the change of name form of the Vendor (from Tai Nam Sin & Sons Realty Limited to Tai Nam Sin & Sons Realty Sdn.Bhd.); **B**
- (v) The certified true copy of the quit rent receipt/ statement evidencing settlement of the quit rent up to the year 2005 duly certified true copy by the relevant land authority;
- (vi) The certified true copy of the assessment receipt; **C**
- (vii) The documents evidencing the land area acquired by the government and the remaining land area of the Property.

After a few days, the said letter dated 13/4/2005 which was duly acknowledged receipt by Mr. Kasturi personally was returned to M/s CLY&Co. **D**

A copy of said letter dated 13.4.2005 from M/s CLY amp; Co, is enclosed herewith and marked as exhibit "11"

As M/s CLY&Co. did not receive any response nor receive the requested documents from M/s K&AM on 5/5/2005, M/s CLY&Co wrote a reminder letter to M/s K&AM in respect of the same. However M/s K&AM did not respond to the said letter. **E**

A copy of said letter dated 5/5/2005 from M/s CLY&CO is enclosed herewith and marked as exhibit "P12". **F**

Thereafter the Complainant/Purchaser conducted a survey of the Property and discovered that the Property did not measure 9 acres as represented by the Vendor in the sale and purchase agreement. Further, the Property was sub-divided into plots of land with varying sizes and shapes. The 4 plots of land also did not adjoin each other as certain portions have been acquired by the government. **G**

In their letter dated 16/6/2006, M/s CLY&Co. inter alia proposed to M/s K&AN that the purchase consideration of the Property be reduced to RM3,026,383.28 and the balance purchase price be settled within a longer period of time as the Complainant has difficulty to obtain bank loan to part finance the purchase of the property due to the existing adverse state and condition of the Property. In the same letter, M/s CLY&Co also stressed that there was misrepresentation by the Vendor in respect of the Property. This letter again drew no response from M/s K&AM. **H**

A copy of said letter dated 16/6/2005 from M/s CLY & Co is enclosed herewith and marked as exhibit "P-13". **I**

A On 28/7/2005, M/s CLY&Co complained to M/s K&AM in respect of their earlier letter dated 16/6/2005 which was not replied by M/s K&AM. In the same letter, M/s CLY&Co also complained that a recent land search conducted on the Property revealed that 2 caveats have been lodged where the details are as follows:

- B**
- (i) Registrar Caveat vide presentation no. 25587/2005 on 1/7/2005;
 - (ii) Private Caveat vide presentation no. 25581/2005 on 1/7/2005.

M/s CLY&Co demanded that the Vendor forthwith remove all the said encumbrances. However, this letter was also not replied by M/s K&AM.

C *A copy of said letter dated 27/7/2005 from M/s CLY&Co is enclosed herewith and marked as exhibit "P14".*

D After lying low for almost 3¼ months, M/s K&AM finally sent a letter dated 2/8/2005 to M/s CLY & Co which inter alia stated as follows:

- (i) M/s K&AM claimed the received mandate to act for the Vendor from another legal firm i.e. Messrs Ravichandran & Anuar;
- (ii) That M/s K&AM, M/s CLY & Co and Messrs Ravichandran & Anuar have been transaction of the Property;
- E** (iii) M/s K&AM have received information from Messrs David Lingam & Co that they acted for Tai Nam Sin and Sons Realty;
- (iv) M/s K&AM admitted that the mandate they received from Messrs Ravichandran & Anuar to act for the Vendor is false or forged;
- F** (v) M/s K&AM requested for time for them and the real estate agent company i.e. Able Land Realty to resolve the unforeseen issues that have arisen

A copy of said letter dated 2/8/2005 from M/s K&AM is enclosed herewith and marked as exhibit "PI 5".

G On 5/8/2005, M/s CLY&Co also received a letter from Messrs David Lingam & Co stating that they are the solicitors acting for the owner of the Property i.e. Tai Nam Sin & Sons Realty Sdn.Bhd. and the owner has never agreed to sell the Property to the Complainant.

H *A copy of said letter dated 5/8/2005 from Messrs David Lingam & Co is enclosed herewith and marked as exhibit "P16".*

I In view of the above upon the Complainant's instruction M/s CLY&Co issued a Notice of Demand dated 8/8/2005 against M/s K&AM inter alia to demand for the refund of the said deposit of RM750,000.00.

A copy of said letter dated 8/8/2005 from M/s CLY&Co is enclosed herewith and marked as exhibit "P-17".

M/S K&AM nor Mr. Kasturi have never disputed the said Notice of Demand at the material time. A

In fact, thereafter in a few telephone conversations with Miss Chew Lay Yan, Mr. Kasturi admitted that M/s K&AM is liable to refund the said deposit of RM750,000.00 to the Complainant. Mr. Kasturi also said that he will institute legal actions for indemnity against the perpetrators of the fraud. B

However, as of too late Mr. Kasturi nor M/s AM have failed to refund the said deposit of RM750,000.00 to the Complainant. C

DETAILS OF MISCONDUCT

In the premise, the Complainant contends that Mr. Kasturi being the solicitor having conduct of the sale and purchase transaction of the Property on behalf of the Vendor is guilty of misconduct and grave impropriety within the meaning of Section 94(3)(c) and (0) of the I.PA as follows: D

- (i) Mr. Kasturi failed to exercise due and reasonable diligence as an advocate and solicitor who has practiced for more than 10 years to ensure that his legal firm i.e. M/s K&AM was in fact and properly authorized by the owner of the Property before making representations to and dealing with the Complainant's solicitors i.e. M.s CLY&Co on behalf of the Vendor in respect of the Property; E
- (ii) Mr. Kasturi failed to exercise due and reasonable diligence and/or had acted recklessly by not confirming directly and in writing with the owner of the Property that the alleged mandate given to them to act on behalf of the owner by Messrs Ravichandaran & Anuar is in fact valid and true especially in view of the huge sum involved in the said transaction i.e. RM7,500,00.00 F
- (iii) By making various representation to and dealing with M/s CLY&Co without properly ascertaining whether he was in fact authorized to do so by the real owner of the Property, Mr. Kasturi had acted recklessly and caused the Complainant to suffer damages; G
- (iv) Mr. Kasturi is guilty of misrepresenting to the Complainant and/or M/s CLY&Co that M/s K&AM as the solicitors acting for the owner of the Property where in fact this is not true;
- (v) Mr. Kasturi is guilty of breaching the express undertaking by him by recklessly releasing the said deposit sum of RM750,000.00 to unauthorized persons without ensuring that the conditions as stipulated in the sale and purchase agreement as well as those stated in M/s CLY&Co's letter dated 13/4/2005 have been complied with; H
- (vi) Mr. Kasturi is guilty of breaching his duties and obligations as a stakeholder by recklessly and/or failing to exercise due and reasonable diligence in releasing the deposit sum of RM750,000.00 to persons who are not in-fact authorized by the owner of the Property to receive the same; I
- (vii) Mr. Kasturi is guilty of misconduct unbecoming of an advocate and solicitor for not responding to the various latters of enquiry from M/s CLY&CO for

- A approximately 314 months especially in view of the fact that Mr. Kasturi also acted as stakeholder of the said deposit of RM750,000.00 and as solicitors acting for the Vendor;
- (viii) Mr. Kasturi is guilty of misconduct unbecoming of an advocate and solicitor for not co-operating with the Complainant and for failing to inform the
- B Complainant of any action undertaken by him to recover the said sum of RM750,000.00 which he has wrongfully released to unauthorized persons;
- (ix) Mr. Kasturi knew and/or should have known that the Complainant and its
- C solicitors M/s CLY&Co have never met with the owner of the Property and were relying solely on the representations made by Mr. Kasturi in the sale and purchase transaction of the Property. Therefore, the failure to act diligently as state above by Mr. Kasturi in the whole transaction is all the more serious damaging and prejudicial to the Complainant.
- D [2] Lembaga Tatatertib Peguam-Peguam telah melalui suratnya bertarikh 22 Mac 2006 minta perayu memberi penjelasan secara bertulis dalam 14 hari daripada tarikh penerimaan surat (ms 92 rekod rayuan). Memandangkan bahawa responden tidak menghantar apa-apa penjelasan, Tribunal Siasatan pula telah pada 19 Julai 2006 minta perayu membuat penjelasan secara bertulis dalam masa 14 hari daripada tarikh penerimaan surat (ms 94 rekod rayuan).
- E Perayu akhirnya menghantar penjelasan bertulis kepada Tribunal Siasatan dan melalui surat bertarikh 23 Julai 2007 (ms 65 rekod rayuan). Kandungan penjelasan perayu adalah seperti berikut:
- F We refer to the above matter and the hearing on 27.6.2007, which was attended by our Mr. Kasturi and Mr. Abdul Malik.
- Firstly, we would like to apologise for the delay in putting our reply in writing. The delay was caused due to our inability to meet Mr. Ravichandaran who is a material party to this complain. However, we append below our explanation, which was orally stated during the hearing.
- G (1) The transaction was a Sale and Purchase agreement between Tai Nam Sin And sons Realty Limited (the Vendor) and Best Fair Promotion Sdn.Bhd. being the purchaser. The agreed sale price was RM7.5 million.
- (2) The background of this transaction is as follows:
- H (a) The actual Vendor's solicitors were Messrs. Ravichandaran & Anuar. The Purchaser's solicitors were Messrs Chew Lay Yan & Co;
- (b) The Vendor's solicitors contacted us (Messrs. Kas & Abdul Malik) informing that the property was for sale;
- I (c) We were informed by brokers (one Mr. Davy Lim Buck Chooi and one Mr. Lim Beng Ang) that their associates, estate agents known as Ableland Realty had a potential buyer for the said property;
- (d) Upon confirmation by our firm with Messrs. Ravichandaran & Anuar we proceeded to have a meeting with the Purchaser's solicitors, brokers and the estate agent;

- (e) We had confirmation from Messrs. Ravichandaran & Anuar that the actual sale price was RM2 million and the Vendors were agreeable to whatever mark up the brokers and the estate agent could achieve. (Enclose herewith copies of letters from Messrs Ravichandaran & Anuar and marked as "Enclosure A"); **A**
- (f) We have to put on record that the Purchaser's solicitors and the estate agent and brokers knew that Messrs. Kas & Abdul Malik only acted on the mandate of Messrs. Ravichandaran & Anuar being the solicitors for the Vendor and Messrs. Kas & Abdul Malik at no time knew or had contact with the Vendor company personally; **B**
- (g) The Sale and Purchase agreement was forwarded through Messrs. Kas & Abdul Malik to Messrs Ravichandaran & Anuar for execution on the part of the Vendor. At this point we have to clarify that on the insistent of the Purchaser's solicitors that Messrs. Kas & Abdul Malik be named as the Vendor's solicitors together with the consent of Messrs. Ravichandaran & Anuar, Messrs. Kas & Abdul Malik was named as Vendor's solicitors in the agreement. In actual fact, Messrs. Kas & Abdul Malik was the nominee of Messrs. Ravichandaran & Anuar) which at that time did not appear to be material); **C**
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- (h) The document stated above, upon execution was duly returned by Messrs. Ravichandaran & Anuar to Messrs. Kas & Abdul Malik, which was forwarded to Messrs. Chew Lay Yan & Co.; **E**
- (i) In respect of the transaction per se, we put it on record that all parties had actual knowledge that there was three (3) firms of solicitors and each firm had its own role to play in the transaction:- **F**
- (i) Vendor's solicitors ie. Messrs. Ravichandaran & Anuar to confirm and comply to the status of the Vendor;
- (ii) Messrs, Kas & Abdul Malik being the brokers and estate agent's solicitors in actual fact being the intermediary;
- (iii) Purchaser's solicitors, Messrs. Chew Lay Yan & Co. having the duty to verify the status of the property and the Vendor. **G**
- (j) In this transaction, it will be confirmed by the estate agents who were more close to the Purchaser and the Purchaser's solicitors that they, the estate agents and also the Purchaser's solicitors did their part in verifying the titles and also the land per se prior and during the subsistence of the transaction; **H**
- (k) The Purchaser's solicitors forwarded the deposit upon condition of release as per their letter dated 13.4.2005. It must also be noted that the Purchaser's solicitors prior to the letters dated 13.4.2005 had written two (2) important letters dated 5.4.2005 and 31.3.2005 which were replied vide our letter dated 12.4.2005. The conditions in the Purchaser's solicitors letter were to be conditions to be fulfilled as we did in our letter dated 12.4.2005 as to the issue of the deposit. However, pursuant to the letter dated 13.4.2005 from the Purchaser's solicitors on the conditions therein we released payment upon confirmation from the actual Vendor's **I**

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solicitors, Messrs. Ravichandaran & Anuar to the respective parties and Messrs. Ravichandaran & Anuar as to the conditions being satisfied. (Enclosed herewith the abovesaid letters marked as “Enclosure B”)

(l) The release was done as follows:-

(i) Messrs. Ravichandaran & Anuar; ii. Messrs. Ableland Realty (estate agent) - Enclosed herewith a copy of cheque paid to Ableland Realty;

(ii) Mr. Wong Hooi Foong (broker) -Enclosed herewith a copy of cheque paid to Wong Hooi Foong.

(m) In the midst of the transaction, the Purchaser requested amendment to the sale price due to acquisition, which parties ie. The Purchaser’s solicitors, the estate agents and the Vendor were trying to resolve. Whilst these issues were being addressed, we received information from the Purchaser’s solicitors that they were contacted by Messrs. David Lingam stating that Messrs. David Lingam acted for the Vendor wherein Mr. Ravichandaran and our Mr. Kasturi arranged and attended a meeting with Mr. David Lingam at Mr. David Lingam’s office. Also present were two (2) Chinese gentlemen who claimed to be the actual owners of the Vendor company. Upon due inquiry by Mr. Ravichandaran and Mr. David Lingam as to the identity card of the two (2) men present against those copies in the possession of Mr. Ravichandaran, we concluded that the actual Vendors were Mr. David Lingam’s clients and were not Mr. Ravichandaran’s clients and as such we realized that the transaction had to be aborted. Having this knowledge, we wrote to Messrs. Chew Lay Yan & Co. informing of the same (Enclosed herewith a copy of the letter dated 2.8.2005).

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We are of the opinion that the complainant should have included Messrs Ravichandaran & Anuar in the complain to be fair as more material information can be gathered as to the transaction and further we also wish to put in record that this transaction was the only transaction were we have acted as an intermediary i.e. relying on the co-parties.

We are still trying to obtain assistance from Messrs. Ravichandaran & Anuar whom we believe can support our explanation.

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[3] Setelah menyelesaikan penyiasatan, Tribunal Siasatan telah pada 11 April 2008 membuat ketetapan fakta seperti berikut:

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The respondent is guilty of misconduct as specified in Section 94(3)(c) of the Legal Profession Act, 1967 in that:

(i) The Respondent had been dishonest or had been fraudulent in the discharge of his duties in that:

(a) The Respondent had released the sum of RM750,000.00 to unauthorized person;

- (b) The Respondent had breached his express undertaking as a stakeholder; **A**
(c) The respondent had breached the term of the Option of Purchase, the sale and purchase agreement and relevant correspondences between the parties to the transaction.

- (ii) The Respondent had been guilty of misconduct unbefitting of an advocate and solicitor or which brings or is calculated to bringing the legal profession into disrepute. **B**

[4] Tribunal Siasatan telah mengesyorkan bahawa satu siasatan rasmi oleh Jawatankuasa Tatatertib diadakan. Atas ketetapan tersebut Lembaga Tatatertib Peguam-Peguam telah pada 11 Mac 2009 melantik satu Jawatankuasa Tatatertib untuk membuat penyiasatan rasmi dan mendengar saksi-saksi daripada pengadu dan perayu dalam kes ini. Setelah menjalankan penyiasatannya, Jawatankuasa Tatatertib telah mengesyorkan bahawa perayu dibatalkan daripada senarai peguambela dan peguamcara. Keputusan ini pula telah disahkan oleh Lembaga Tatatertib Peguam-Peguam dan pada 21 Mei 2010 perayu telah diperintah dibatalkan daripada senarai peguambela dan peguamcara. **C**
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[5] Ketetapan fakta dan cadangan kepada Lembaga Tatatertib Peguam-Peguam oleh Jawatankuasa Tatatertib pada 7 Januari 2010 adalah seperti berikut: **E**

On 7th March 2005, the solicitors for the Complainants, Chew Lay yan & Co, wrote to the Respondent's firm, Kas and Abdul Malik. In the letter, it was intimated that the company they are representing, Best Fair Promotion Sdn.Bhd, was interested to purchase certain property then known as Lot 896 Mukim Kajang (the Property) which was owned by a company, Tai Nam Sin and Sons Realty Sdn.Bhd (the Company). As usual terms were proposed for the vendor's consideration. The most crucial part of the letter as for as this enquiry is concerned is the part where the author of the letter made an assumption that the Respondent's firm were appointed by the Company to act for them in the proposed sale and purchase of the Property. The response of the Respondent is equally crucial. In their reply dated 8th March they chose to affirm the assumption that they were indeed legally appointed as understood from paragraph 2 of the said letter that they had sought the owner's instruction as to the terms and conditions prior to the reply. It was an unqualified admission without any room for alternative interpretation. Fatefully, it was on the strength of this letter that further negotiation followed, culminated with the payment by the Complainant in the sum of RM750,000.00 to the Respondent's part of the purchase price As expected of a prudent lawyer, the solicitors for the Complainant inserted an overriding condition that the payment is subject to the undertaking of the Respondent to do certain act so protect the purchase's interests. **F**
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Matters came to a head when the Respondent failed to comply with the conditions of the undertakings and when pressed for -justification, could only meekly reply that all the while his firm was not taking instructions from the Company and that the firm was merely an agent for another firm solicitor. If this was the best explanation

- A** for the failure, it is abject as not only it was naming names and passing the blame but it was also an admission of deception. The letter by David Lingam of August 5, 2005 as to who was the actual solicitors only added the icing to the stale cake and could only serve to block any get out path for the Respondent.
- B** On 7th August 2005, the solicitors demanded the refund of the money. With no refund forthcoming a formal complaint was lodged on 7th March 2006 for dishonest conduct against the solicitor in charge, Mr. Kasturi Kesveren a/l Balasamy, the Respondent before us.
- C** After giving due time to the Respondent to make his submission and the Respondent failing to file any submission the committee come to the following finding of fact.
- D** (1) The Respondent did represent to the Complainant's solicitors that his firm was acting for the vendor.
- (2) A sum of RM750,000.00 was paid to the Respondent as part of the purchase price subject to certain undertaking.
- E** (3) The representation by the Respondent as to the appointment to act was false and that the Respondent knew all the time it was false.
- (4) In spite of the undertaking and the representation, the Respondent failed to refund the money held by him.
- F** (5) That the money was paid to third parties is not an excuse not to fulfill the obligation to refund the money.
- (6) The act in making false representation and knowing that it was false and that further knowing the other party was in complete reliance on the representation was reprehensible, deceitful, reckless and dishonest.
- G** (7) The excuse of being duped in a cheating scheme, even if accepted, does not extinguish the overriding duty of an advocate and solicitor to act honestly. The breach of duty in acting dishonestly and also the dishonoring of the solicitor's written undertaking is much too extensive and disproportionate to overcome the plea by the Respondent for sympathy for an innocent victim.
- H** (8) Without any justified mitigating circumstances and in view of the devious role played by the Respondent in the scheming nature of transaction and the extent of loss suffered, the Committee recommends that the Respondent be struck off the roll of the advocate and solicitor.
- I** [6] Prosiding Tribunal Siasatan pada mulanya ditangguh daripada 15 September 2006 sebanyak empat kali atas permohonan perayu hinggalah kepada 27 Jun 2007 dan selepas beberapa kali prosiding dijalankan telah mencapai keputusan pada 11 April 2008. Perayu telah memberi surat penjelasan terhadap aduan berkenaan kepada Tribunal Siasatan melalui surat bertarikh 23 Julai 2007 (ms 65–68 rekod rayuan). Perayu juga mengikut rekod Tribunal Siasatan mengemukakan sebanyak sepuluh salinan surat bersama surat penjelasannya. Prosiding di Jawatankuasa Tatatertib hanya mengambil satu hari sahaja, iaitu pada 28 Mei 2009 selepas tiga kali prosiding

ditangguhkan sebelum itu. Dalam prosiding tersebut perayu diwakili oleh peguamcara M Mahendran. Apabila pengerusi Jawatankuasa Tatatertib menjemput pihak-pihak periksabalas pengarang atau penulis dokumen-dokumen untuk mempertikai apa-apa fakta atau mengemukakan fakta yang baru, perayu melalui peguamcaranya telah menyatakan 'I have no cross and have no further fact to add and will not call any witness'.

[7] Dalam rayuan ini perayu telah bangkitkan berbagai isu dan fakta terhadap ketetapan yang dibuat oleh Jawatankuasa Tatatertib serta ketetapan oleh Tribunal Siasatan. Perayu menyatakan bahawa Tribunal telah terkhilaf apabila membuat kesimpulan bahawa perayu bersalah ke atas kesalahan salah laku. Tugas Tribunal mengikut perayu adalah hanya untuk membuat cadangan-cadangan kepada Lembaga Tatatertib Peguam-Peguam. Jika dikaji Laporan Tribunal Siasatan memang benar ungkapan 'guilty of misconduct as specified in section 94(3)(c) of the Legal Profession Act 1967' telah digunakan. Walau bagaimanapun perkataan 'guilty' perlu dibaca dalam konteks laporan sepenuhnya yang dibuat oleh Tribunal Siasatan. Kenyataan tersebut adalah selaras dengan tanggungjawab dan tugas Tribunal tersebut untuk mencadangkan satu penyiasatan rasmi diadakan oleh Jawatankuasa Tatatertib sekiranya 'cause of sufficient gravity exists' terhadap perayu. Perkataan 'guilty of misconduct' adalah ketetapan Tribunal selepas mempertimbangkan keterangan-keterangan dan dokumen yang dikemukakan kepadanya. Tribunal Siasatan dalam laporannya hanya mengesahkan bahawa pada pendapat mereka kesalahan oleh perayu sepertimana aduan responden telah dibuktikan daripada keterangan-keterangan dan dokumen-dokumen yang dikemukakan kepadanya. Perayu tidak diprejudiskan kerana perkataan 'guilty of misconduct' bukan ketetapan muktamad terhadap perayu kerana di sisi undang-undang hanya Jawatankuasa Tatatertib yang boleh menentukan mengenai apa-apa kesalahan yang dilakukan oleh perayu dan ketetapan itupun perlu disahkan oleh Lembaga Tatatertib Peguam-Peguam (s 103C dan 103D, Akta Profesion Undang-Undang 1976).

[8] Selepas itu perayu telah membangkitkan isu bahawa Jawatankuasa Tatatertib telah mengenakan tiga pertuduhan yang berbeza daripada pertuduhan-pertuduhan oleh Tribunal Siasatan terhadapnya. Perkara ini prejudis perayu dalam pembelaannya. Tribunal Siasatan telah menyatakan seperti berikut:

- (i) for releasing a sum of RM750,000.00 being 10% deposit in respect of a sale and purchase transaction to unauthorized persons; and
- (ii) in breach of his express undertaking as a stakeholder; and
- (iii) in breach of the terms of the Option of Purchase, the sale and purchase agreement and relevant correspondences between the parties to the transaction.

- A [9] Jawatankuasa Tatatertib pula telah menyatakan seperti berikut:
- (i) Respondent had falsely represented he was acting for a party
 - (ii) Pursuant to and in reliance of the representation the Complainant transferred to the Respondent a sum of RM750,000.00
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- (iii) Respondent had failed to refund the sum after a dispute of representation was disclosed and admitted.
- C [10] Jika dikaji kedua-dua kenyataan tersebut dalam nota-nota keterangan Tribunal Siasatan (ms 97 rekod rayuan) dan Jawatankuasa Tatatertib (ms 105 rekod rayuan), jelas kenyataan-kenyataan tersebut bukan pertuduhan tetapi merupakan ‘ringkasan aduan’ (summary of complaint). Kesalahan yang dihadapi oleh perayu dan spertimana didalam aduan responden adalah kesalahan salah laku sepertimana di bawah s 94(3)(c) dan (o) Akta berkenaan.
- D Keadaan tersebut tidak mengelirukan perayu kerana seperti dinyatakan kenyataan-kenyataan tersebut merupakan “Ringkasan” aduan terhadap perayu dan salinan aduan lengkap oleh responden yang termasuk peruntukan kesalahan terhadap perayu telah di serahkan kepada perayu oleh Tribunal Siasatan seawal pada 19 Julai 2006. Perayu sendiri apabila menerimanya tidak bangkitkan apa-apa bantahan atau menyatakan dia keliru dalam surat penjelasannya kepada Tribunal Siasatan bertarikh 23 Julai 2007 ataupun semasa prosiding di hadapan Jawatankuasa Tatatertib. Daripada kandungan surat penjelasan perayu jelas bahawa perayu tidak keliru mengenai kesalahan yang dikatakan dilakukan olehnya dan perayu boleh memberi penjelasan terperinci serta telah mengemukakan beberapa salinan surat-surat bersama penjelasannya. Kalau ada kesilapan dalam perkara ini pun, ianya merupakan perkara teknikal dan remeh dan bukan satu perkara substantif yang memprejudiskan perayu sebagai peguambela dan peguamcara. Yang penting mengenai isu ini ialah bahawa Jawatankuasa Tatatertib tidak mengambilkira perkara-perkara yang luar daripada apa yang diadukan oleh responden ataupun luar daripada pengetahuan perayu.
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- H [11] Selain daripada itu perayu telah membangkitkan beberapa isu mengenai ketetapan-ketetapan Tribunal Siasatan dan Jawatankuasa Tatatertib. Isu-isu terhadap ketetapan Tribunal Siasatan dan Jawatankuasa Tatatertib akan pertimbangkan bersama kerana ianya adalah isu-isu yang sama dan berkaitan. Mengenai perkara ini perayu menyatakan bahawa dia tidak melakukan apa-apa misrepresentasi kepada responden. Perayu telah diberi kuasa oleh Tetuan Ravichandaran & Anuar (‘Ravi’). Peguamcara perayu mengikut perayu pada setiap masa ada pengetahuan sebenar bahawa peguamcara penjual hartanah sebenarnya adalah Ravi. Perayu telah mengemukakan salinan-salinan surat yang menunjukkan bahawa perayu diberikuasa oleh Ravi untuk bertindak bagi pihak firma Ravi. Daripada penjelasan perayu sendiri nama firma Ravi
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pertamakali ditimbulkan oleh perayu kepada peguamcara responden melalui surat perayu bertarikh 2 Ogos 2005 (ms 58 rekod rayun). Perjanjian jual beli yang ditandatangani pada 12 April 2005 dengan jelas menyatakan bahawa firma perayu merupakan peguamcara bagi pihak penjual hartanah berkenaan. Surat peguamcara responden mengenai terma-terma untuk perjanjian jualbeli yang dicadangkan adalah untuk perhatian perayu sendiri (ms 11 rekod rayuan) dan surat balasan firma perayu merujuk kepada perbincangan perayu sendiri dengan peguamcara responden mengenai perjanjian jual beli yang dicadangkan. Malah kesemua surat-surat peguamcara responden kepada firma perayu adalah untuk perhatian perayu sendiri.

[12] Penjelasan perayu tersebut kepada peguamcara responden adalah selepas tiga surat bertarikh 5 Mei 2005, 16 Jun 2005 serta 28 Julai 2005 (ms 53–57 rekod rayuan) dihantar kepada perayu oleh peguamcara responden. Penjelasan responden bertarikh 2 Ogos 2005 itu adalah hampir tiga bulan daripada surat peguamcara responden itu. Mengikut surat-surat yang dikemukakan oleh responden jelas bahawa perayu sehingga mendapat cek kedua berjumlah RM600,000 melalui surat peguamcara responden bertarikh 13 April 2005 perayu sentiasa beri surat-surat balasan dengan pantas kepada surat-surat peguamcara responden. Selepas saja menerima cek kedua itu daripada peguamcara responden jelas perayu langsung tidak ada respon kepada surat-surat peguam responden kepadanya. Tiga surat berkenaan jelas bertanya mengenai perkembangan-perkembangan ke atas perkara-perkara yang perlu dilakukan oleh perayu selaku peguamcara penjual hartanah berkenaan. Melalui surat bertarikh 2 Ogos 2005 perayu pertama kali menyatakan kepada peguamcara responden bahawa Tetuan Ravi sebenarnya mewakili penjual hartanah tersebut. Perayu menyatakan dalam surat itu 'with great regret we have to inform you that all of us i.e. our firm, Messrs S. Ravichandaran & Anuar (who had given us mandate to act for their client) being the seller ...'. Tiada apa-apa keterangan atau dokumen yang lain menunjukkan bahawa perayu telah menyatakan mengenai firma Ravi kepada peguamcara responden sebelum ini. Apa perlunya pada masa itu perayu menjelaskan kepada peguamcara responden bahawa firma Ravi yang sebenarnya peguamcara penjual hartanah sekiranya perayu telah berbuat demikian sebelum itu atau peguamcara responden mengetahui mengenainya sebelum itu?

[13] Mengenai isu bahawa perayu mewakili firma Ravi, salinan-salinan surat yang dikemukakan kepada Tribunal Siasatan tidak disokong dengan akuan bersumpah untuk mengesahkan kebenaran kandungan surat-surat, tersebut, penjelasan atau apa-apa jawapan perayu. Malah di hadapan Jawatankuasa Tatatertib perayu sendiri enggan memberi apa-apa kenyataan atau membuat

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A pemeriksaan ke atas saksi atau dokumen responden. Peraturan 6 Advocates and Solicitors (Disciplinary Enquiry) Procedure Rules 1970 menyatakan sedemikian:

6 Solicitor concerned to answer the allegation:

- B (a) The Solicitor concerned shall, within 10 days after receipt of the statement (or where the Disciplinary Committee had acted under rule 4, then within 10 days after receipt of the amended statement) answer in writing the particulars of the allegation in similar numbered paragraphs setting out the essential facts in Answer without argument;
- C (b) Such Answer shall be supported by a statutory declaration verifying the truth of the answers made by the Solicitor concerned and shall have exhibited to it copies of all documents referred to therein and intended to be relied on by him."

D [14] Tanpa akuan bersumpah oleh perayu, salinan-salinan surat dan dokumen perayu tidak ada nilai yang tinggi daripada segi bukti dan perkara-perkara dalam salinan-salinan surat-surat itu, banyaknya adalah kata dengar. Lebih-lebih lagi keesahan kandungan surat-surat tersebut tidak tertakluk kepada pemeriksaan balas, penjelasan atau disangkal oleh responden.

E [15] Perayu juga telah membangkitkan isu bahawa dia tidak melanggar apa-apa akujanji kerana semua perkara berkaitan dengan pelepasan wang deposit telah disempurnakan dan pada masa berkenaan pihak-pihak sedang berunding mengenai pembayaran baki wang pembelian hartanah sahaja.

F Kenyataan perayu ini adalah tidak benar jika dilihat isu-isu dan perkara-perkara yang dibangkitkan oleh peguamcara responden dalam tiga surat bertarikh 5 Mei 2005, 16 Jun 2005 dan 28 Julai 2005 kepada perayu. Selain daripada itu isu asas mengenai salah laku oleh perayu ialah bukan bahawa wang RM750,000 itu telah dilepaskannya sebelum

G dokumen-dokumen dan perkara-perkara berkaitan penjualan hartanah belum disempurnakan tetapi bahawa perayu sebagai peguamcara dan pemegang amanah kepada wang berkenaan telah melepaskan wang berkenaan kepada orang yang tidak diberikuasa sepertimana dalam perjanjian jualbeli, iaitu penjual hartanah tersebut.

H [16] Perayu mengikut surat penjelasannya kepada Pegawai Tribunal Siasatan bertarikh 23 Julai 2005 menyatakan bahawa dia melepaskan wang RM750,000 kepada tiga pihak seperti berikut:

- I (a) Kepada Tetuan Ravi RM200,000 melalui surat bertarikh 20 April 2005 (ms 80 rekod rayuan);

- (b) Kepada Ableland Realty RM250,000 (ms 82 (rekod rayuan); dan **A**
- (c) Kepada Wong Hooi Fong RM150,000 (ms 83 rekod rayuan) dan RM150,000 (ms 84 rekod rayuan).
- [17] Adalah tanggungjawab perayu sebagai peguamcara bagi pihak penjual hartanah selaras dengan perjanjian jualbeli berkenaan (ms 27–50 rekod rayuan) dan surat-surat berkaitan dengan perjanjian tersebut antara peguamcara responden dan perayu untuk menentukan bahawa apa-apa pelepasan wang deposit RM750,000 yang diberikan kepadanya oleh peguamcara responden dilepaskan selepas kehendak-kehendak seperti option, peruntukan-peruntukan perjanjian jual beli yang berkenaan dan tanggungjawab perayu sebagai pemegang amanah (*stakeholder*) dipatuhi. Perayu juga bertanggungjawab supaya pelepasan wang deposit itu adalah kepada orang-orang yang diberikuasa di bawah perjanjian jualbeli. Di sinilah di mana perayu telah melakukan kesalahan salahlaku sebagai peguamcara sepertimana didapati salah oleh Jawatankuasa Tatatertib. **B**
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- [18] Mengikut penjelasan perayu, dia telah melepaskan wang kepada tiga pihak sepertimana telah dinyatakan atas pengesahan oleh Tetuan Ravi. Penjelasan tersebut merupakan alasan kosong tanpa apa-apa bukti langsung. Salinan-salinan surat dan cek-cek yang dikemukakan oleh perayu tidak dapat dipastikan sebagai salinan-salinan yang sah atau asal. Ianya juga tidak disokong dengan akaun bersumpah. Tiada penjelasan dan keterangan sama ada pihak-pihak berkenaan sebenarnya menerima dan menunaikan amaun cek-cek itu. Tiada keterangan daripada kenyataan akaun anakguam firma perayu bahawa cek-cek itu telah didebit daripada akaun tersebut. Oleh yang demikian sama ada amaun RM750,000 itu sebenarnya dikeluarkan sepertimana diperkatakan oleh perayu tidak ada buktinya. Perkara-perkara ini adalah dalam pengetahuan perayu seorang. Dalam penjelasannya perayu menolak tanggungjawab kepada Tetuan Ravi. Alasan perayu merupakan alasan kosong tanpa apa-apa nilai bukti. Jawatankuasa Tatertib telah memberi peluang kepada perayu untuk mengemukakan apa-apa keterangan dan memeriksa saksi-saksi dan dokumen-dokumen responden. **E**
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- [19] Kebanyakan penjelasan dan alasan perayu yang dibangkitkan dalam rayuan ini tidak dibangkitkan dalam prosiding Jawatankuasa Tatatertib. Walau bagaimanapun, sekiranya kesemuanya dikemukakan oleh perayu semasa prosiding di Jawatankuasa Tatatertib, ianya tidak akan menukarkan ketetapan-ketetapan Jawatankuasa Tatatertib mengenai kesalahan salahlaku perayu sepertimana aduan responden. Tingkahlaku perayu secara keseluruhan **H**
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- A dalam episod kes ini menunjukkan bahawa perayu tidak mempunyai apa-apa alasan atau pembelaan yang kukuh. Sebelum menerima kedua-dua amaun RM150,000 dan RM600,000 apa-apa surat daripada peguamcara pemohon dijawab dengan segera. Tetapi apabila selesai sahaja terima kedua-dua amaun tersebut apa-apa surat daripada peguamcara responden tidak dijawab sehingga hampir tiga bulan. Perayu telah terima cek bagi amaun RM150,000 bertarikh 7 Mac 2005 pada 8 Mac 2005 dan cek bagi amaun RM600,000 bertarikh 12 April 2005 pada 13 April 2005.
- B
- C [20] Mengikut penjelasan perayu sendiri dua cek-cek bagi amaun RM150,000 dan satu cek bagi amaun RM250,000 dikeluarkan oleh perayu pada tarikh 18 April 2005. Melalui surat bertarikh 20 April 2005 perayu kononnya telah mengeluarkan cek RM200,000 kepada firma Ravi. Persoalannya adalah kenapa, sebaik sahaja perayu menerima amaun
- D RM750,000 daripada peguamcara responden dan selepas kononnya telah membuat pengeluaran melalui empat cek-cek firmanya pada 18 April 2005 dan 20 April 2005, perayu enggan atau tidak menjawab tiga surat-surat peguam responden bertarikh 5 Mei 2005, 16 Mei 2005 dan 28 Julai 2005 sehinggalah pada 2 Ogos 2005 apabila pada pertama kali menyatakan bahawa perayu sebenarnya diberi mandat oleh firma yang merupakan peguamcara sebenar penjual hartanah tersebut. Mengenai perkara ini Jawatankuasa Tatatertib telah menyatakan sedemikian 'and when pressed for justification, could only meekly reply that all the while his firm was not taking instructions from the company and his firm was merely an agent for another firm of solicitors'. Sepertimana ketetapan Jawatankuasa Tatatertib (ms 90 rekod rayuan) perkara ini bersama surat jawapan perayu bertarikh 8 Mac 2005 merupakan perkara-perkara penting yang menunjukkan bahawa perayu telah buat misrepresentasi kepada pihak responden. Sebagai tambahan perjanjian jualbeli pada setiap masa secara nyata memperuntukkan firma perayu sebagai peguamcara penjual hartanah.
- E
- F
- G
- H [21] Walaupun perayu tidak ada beban membuktikan bahawa dia tidak bersalah tetapi dalam keadaan di mana Jawatankuasa Tatatertib telah mempunyai keterangan-keterangan yang sah dan lengkap yang melampaui apa-apa keraguan yang munasabah yang menunjukkan kesalahan salahlaku oleh perayu, perayu perlu membangkitkan apa-apa keraguan yang munasabah terhadap keterangan-keterangan tersebut. Dalam kes ini perayu gagal berbuat demikian. Kesalahan salahlaku sepertimana diadukan oleh responden dengan jelas telah dibuktikan pada Jawatankuasa Tatatertib pada tahap melampaui apa-apa keraguan yang munasabah. Oleh yang demikian saya dapati bahawa tiada apa-apa kesilapan dilakukan oleh Jawatankuasa Tatatertib dalam membuat ketetapan dan keputusan mengenai kesalahan salahlaku terhadap
- I

perayu. Isu-isu yang dibangkitkan oleh perayu adalah tidak berasas dan remeh. Rayuan perayu oleh yang demikian ditolak dengan kos. **A**

Rayuan ditolak dengan kos.

Dilaporkan oleh Ashgar Ali Ali Mohamed **B**

C

D

E

F

G

H

I